Prior Filing with Commission Confirms
AT&T's Enhanced Prepaid Card Service Is An Information Service

AT&T has previously demonstrated that the 1996 Act's service definitions, the Commission's enhanced services regulations, and the Commission's consistent regulatory classification decisions all establish that enhanced prepaid card services that make available stored information not of the end-user's choosing unquestionably are "information services."[1] The incumbent local exchange carriers ("ILECs") who oppose information services classification of these services, in contrast, have been unable to point to *any* contrary suggestion in the statute, rules or precedents. Rather, throughout this proceeding the ILECs have instead relied upon fabricated parades of horribles and other misguided policy arguments why the Commission should simply disregard all of the relevant law. Perhaps finally recognizing that this approach could not be sustained – and certainly could not support any *retroactive* ruling – Sprint's latest *ex parte* letter claims that the Commission's staff *did* previously reject AT&T's view that enhanced prepaid card services are enhanced services. *See* August 2, 2004 *ex parte* Letter from Richard Juhnke to Marlene H. Dortch ("[w]hen AT&T first raised this issue informally with the then-Common Carrier Bureau staff roughly a decade ago, it was given the short shrift its argument deserves"). Sprint provides no citation or explanation for this assertion, which has things exactly backwards.

Sprint is right about one thing: AT&T did inform the Commission "roughly a decade ago" that it planned to treat an early prepaid calling card service that made available stored commercial advertising messages as an enhanced service. AT&T did not express this view "informally," as Sprint claims, but in a mandatory 1994 public filing to change its Cost Allocation Manual that triggered a Public Notice in which the Commission solicited comment on AT&T's view. Nor did the Bureau reject AT&T's position, as Sprint suggests. To the contrary, under the governing Commission rules, AT&T's position that this advertising-enhanced prepaid card service was an enhanced service (and therefore to be accounted for as a "nonregulated" service in AT&T's Cost Allocation Manual) was "deemed accepted" when the Commission chose not to challenge it during the mandatory 60 day notice period. *See American Telephone & Telegraph Company's Permanent Cost Allocation Manual for the Separation of Regulated and*

---

[1] *See*, *e.g.*, July 13, 2004 *ex parte* Letter from David Lawson to Ms. Marlene H. Dortch; July 12, 2004 *ex parte* Letter from Amy L. Alvarez to Ms. Marlene H. Dortch; May 11, 2004 *ex parte* Letter from David Lawson to Ms. Marlene H. Dortch; 47 U.S.C. § 153(20) (defining "information service" as any service that includes "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications"); 47 C.F.R. § 64.702(a) (defining "enhanced services" as services offered over common carrier transmission facilities that "provide the subscriber additional, different, or restructured information" or "involve subscriber interaction with stored information"); *Northwestern Bell Telephone Company Petition for Declaratory Ruling*, Memorandum Opinion and Order, 2 FCC Rcd. 5986, ¶ 20 (1987) (a service in which a customer "makes a phone call and hears a recorded advertisement . . . involves 'subscriber interaction with stored information,' and [thus] falls *squarely* within the definition of 'enhanced service' in Section 64.702(a) of [our] rules").

Nonregulated Costs, 3 FCC Rcd. 1786, ¶ 109 (1988) ("*AT&T CAM Order*"). Thus, the events Sprint has brought to the Commission's attention provide yet further confirmation that in urging a telecommunications service classification for services that have for more than a decade been recognized as enhanced services, the ILECs are asking the Commission to substitute "new law" in place of "old law that is reasonably clear," *Verizon Telephone Co.* v. *FCC*, 269 F.3d 1098, 1109 (D.C. Cir. 2001).

To place AT&T's 1994 filing in context, it is necessary to understand the purpose – and importance – of the Commission's cost allocation rules to the regulatory scheme in place at that time. In 1994 all Tier 1 LECs and AT&T (which was then classified as a dominant carrier) were required to maintain detailed "Cost Allocation Manuals" (or "CAMs"), to separate the costs of their regulated and nonnregulated services. *See*, *e.g.*, *Separation of Costs of Regulated Telephone Services from Costs of Nonregulated Activities*, Report and Order, 2 FCC Rcd. 1298 (1987), *modified on recon.*, 2 FCC Rcd. 6283 (1987), *modified on further recon.*, 3 FCC Rcd. 6701 (1988), *aff'd sub nom.*, *Southwestern Bell Corp.* v. *FCC*, 896 F.2d 1378 (D.C. Cir. 1990). The central purpose of these CAM requirements was to prevent cross-subsidization of regulated and nonnregulated services. *See* 2 FCC Rcd. at 1303, ¶ 33 ("insuring just and reasonable rates for services that remain subject to regulation requires guarding against cross-subsidy of nonregulated ventures by regulated services"); *Southwestern Bell*, 896 F.2d at 1381 (recognizing that "strong incentives exist for carriers to channel their nonregulated costs into regulated telephone services"). That goal could only be accomplished, of course, if services were properly classified, and the Commission, accordingly, strictly scrutinized these carriers' proposed classifications of their service offerings. *See*, *e.g.*, *AT&T CAM Order* at ¶ 109 ("it is very important for the Commission to obtain current information on the cost categories and how these are allocated between regulated and unregulated activities").

The Commission issued a lengthy order addressing (and correcting deficiencies in) each carrier's initial CAM filing and establishing detailed procedures to govern future modifications to the manuals. Because a carrier's introduction of a new service claimed to be enhanced went to the heart of the cross-subsidization concerns that animate the CAM rules, changes to reflect "the introduction of enhanced services that require shared use of basic network switch investment" were required to be submitted "at least 60 days prior to implementation." *AT&T CAM Order* at ¶ 109. As the Commission explained later: "[t]he purpose of the Commission's 60-day notice requirement . . . is to give the Bureau and third parties an adequate period to review CAM changes and offer comments." *Implementation of the Telecommunications Act of 1996,* 12 FCC Rcd. 8071, ¶ 32 (1997) ("Despite recent and expected changes in the industry due to increased competition, this purpose remains valid"). Proposed CAM amendments were challenged as necessary, and the Bureau did not hesitate to stay proposed changes that raised any "serious concerns." *See*, *e.g.*, *BellSouth Corporation's Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs*, 7 FCC Rcd. 7220 (1992). However, the Commission's rules with respect to both Tier 1 LECs and AT&T expressly provided that "proposed amendments to the manual *will be deemed accepted* unless the Bureau, pursuant to its delegated authority, rejects or stays the effectiveness of the challenge." *AT&T CAM Order* at ¶ 109.

AT&T filed proposed amendments to its CAM on December 30, 1994. A copy of that filing is attached hereto. AT&T listed among many "nonregulated activities" a new service called "Promotional Pre Paid Card (PPPC)." This service is described in the 1994 filing as "a customized Pre Paid Card that contains promotional advertisements for specific customers. These customers provide the cards to their end-user customers who will hear the advertisements initially when they dial into the PPPC platform and on every subsequent call while dialing within the PPPC platform." AT&T's filing then expressly states: "This activity is an enhanced service which utilizes network plant." *Id*., Section II, p. 5.

The Commission issued a public notice seeking comment on AT&T's proposed CAM amendments on January 19, 1995, *Carriers File Revisions to their Cost Allocation Manuals,* Public Notice, DA 95-34, 10 FCC Rcd. 679 (1995). A copy of the Public Notice, which established comment and reply comment dates of February 13, 1995 and February 28, 1995, respectively, is attached hereto. The same Public Notice also sought comment on proposed CAM amendments by the Bell Operating Companies and Sprint's predecessors. Although comments and objections were filed with respect to some of these other carriers' proposed CAM amendments, *no* party objected to AT&T's classification of its advertising-enhanced prepaid card service (or any other aspect of AT&T's proposed CAM amendments). And, after reviewing AT&T's proposed amendments, the Bureau declined to stay those amendments. Accordingly, AT&T's proposed amendments to reflect the classification of its advertising-enhanced prepaid card services as a nonregulated enhanced service were "deemed accepted" on February 28, 1995.

Thus, contrary to Sprint's rhetoric, the events of "roughly a decade ago" confirm that AT&T long ago apprised the Commission and the ILECs of the existence of an AT&T advertising-enhanced prepaid card service, and AT&T's enhanced service treatment of that service was neither stayed by the Commission nor opposed by the ILECs. That is because it was abundantly clear then from the plain text of the Commission's rules and consistent precedents that any service that provided the subscriber with additional non-call-related stored information qualified as an information service. And it remains abundantly clear today under all of the relevant statutes, rules and precedents that advertising-enhanced prepaid card services are information services and that any contrary ruling by the Commission would be an abrupt change in settled law that could not be applied retroactively even if it could be sustained prospectively.

* * *